## LIEW KA KET v. BIGRAISE TELIPOK SDN BHD & ANOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
RAVINTHRAN PARAMAGURU J
[CIVIL SUIT NO: BKI-22-270-12-2011]
8 FEBRUARY 2014

***CONTRACT:*** *Termination – Validity – Sale and purchase agreement – Termination by receiver and manager on grounds of non-payment of purchase price – Whether purchase price settled through contra arrangement – Whether receipt of contra payment acknowledged by developer – Whether receiver and manager adopted SPA by conduct – Whether termination of SPA lawful*

***LIMITATION:*** *Specific performance – Sale and purchase agreement – Unlawful termination of agreement – Limitation period of three years – Whether specific performance barred by limitation – Whether purchaser entitled to damages in lieu of specific performance*

The first defendant together with the second defendant had jointly developed a project. The plaintiff was the purchaser of a unit of apartment in the project. Subsequently, the first defendant fell into financial difficulties causing the project to be abandoned. However, when the first defendant was placed in receivership, the receivers revived the abandoned project and managed to obtain the consent of some of the purchasers to waive the liquidated ascertained damages ('the LAD') and commit themselves to make progress payments according to the certificate of the architect. The plaintiff did not sign any letter to waive the LAD. Upon completion of the project, the plaintiff was not given vacant possession of the unit and was asked to pay the purported balance of the purchase price. The plaintiff stated that the full purchase price had been paid before the receivers were appointed. The receivers, insisting that they were not bound by the dealings between the plaintiff and the defendants before the appointment, had subsequently terminated the sale and purchase agreement ('the SPA') signed between the plaintiff and the first defendant. Hence, the action by the plaintiff for the remedies, *inter alia*, (i) a declaration that the SPA was valid and subsisting; (ii) alternatively, damages for wrongful termination of the SPA; (iii) specific performance; and (iv) damages *in lieu* of or in addition to specific performance. The issues for the court's determination were whether the plaintiff had paid the full purchase price and whether the defendant was lawfully entitled to terminate the SPA. It was the plaintiff's case that the purchase price for the apartment unit was paid by way of contra arrangement of the plaintiff's native title land to one Mansur who in turn agreed to release part payment to the purchase of the apartment unit. The redemption sum was subsequently settled as evidenced by letter dated 18 March 1999 from the first defendant and the banks letter confirming that there was no outstanding sum owed in respect of redemption of the property.

**Held (order accordingly):**

**(1)** The plaintiff exhibited documentary evidence, *ie*, the related SPA and memorandum of understanding to support his case that there was indeed a contra arrangement wherein the first defendant had bought their native lands through Mansur. That evidence was not rebutted by the receiver and manager who acted for the first defendant. None of the directors of the first and second defendants took the witness stand to deny the arrangement. Further, the first defendant had confirmed, in its letter dated 18 March 1999, that the difference between the loan amount and the selling price had been paid. The bridging financier had also certified twice that the redemption sum in respect of the apartment unit in question had been fully paid. As the receiver and manager had not been appointed at that time, it was highly probable that the directors of the first defendant had received the contra payment as evidenced by the letter dated 18 March 1999. (paras 11 & 12)

**(2)** The legality of the sale of the native land was completely irrelevant to the present case. The plaintiff was not attempting to seek relief under the SPA that he had signed with Mansur for the sale of his native land. The sale of the native land had been mentioned only to support the plaintiff's case that the purchase price for the apartment unit in question had been fully settled and that the payment by contra had been acknowledged by the plaintiff. Further, in light of the letter dated 18 March 1999, it must be taken that the plaintiff had proved his assertion that the purchase price was fully paid. (para 13)

**(3)** The successive receiver and manager had, by their conduct, adopted the SPAs that were signed between the first defendant and the various purchasers that included the plaintiff. The receiver and manager had purported to terminate the SPA for failure to pay the full purchase price. If the receiver and manager could arrogate themselves the power to terminate the sale and purchase agreement in question, it also meant that they had adopted it in the first place. Further, there was no lawful reason why the receiver and manager should be at liberty to deny or repudiate payments received and acknowledged by the first defendant. (para 15)

**(4)** The limitation period to pursue the remedy of specific performance is three years. The occupation certificate was issued on 3 September 2007 and since the receiver and manager had failed to give vacant possession within 14 days, the time to sue for specific performance ran after the said 14-day period. The suit was instituted in 2011 and therefore, the remedy of specific performance was barred by limitation. (para 16)

**(5)** The plaintiff had proved on a balance of probabilities that the full purchase price had been paid for the apartment unit and therefore the termination of the SPA by the receiver and manager was unlawful. *In*

*lieu* of specific performance and liquidated ascertain damages, the court ordered damages to be assessed in favour of the plaintiff for breach of contract against the defendants jointly and severally. (para 17)

**Case(s) referred to:**
*Gomba Holdings Ltd v. Homan (1986) 1 WLR 1301* ***(refd)***
*R v. Board of Trade ex p St Martin Preserving Co Ltd (1964) 2 All ER 561* ***(refd)***

**Legislation referred to:**
Sabah Land Ordinance (Cap 68), s. 17

*For the plaintiff - Jeyan Marimuttu; M/s J Marimuttu & Partners*
*For the 1st defendants - Sunny Durai; M/s Allion Kitingan & Partners*
*For the 2nd defendants - Leo Saga; Official Receiver, Department of Insolvency*

*Reported by S Barathi*

## JUDGMENT

**Ravinthran Paramaguru J:**

### Introduction

**[1]** This is a suit by a property purchaser against a developer and land owner for specific performance, liquidated ascertained damages (LAD) and damages. The defence of the developer is that the balance of purchase price was not paid and therefore they are entitled to terminate the sale and purchase agreement.

### Brief Facts

**[2]** The property project in question is known as "Taman Wangsa Phase 1 and II" in Telipok District, Sabah. The project was developed on two parcels of land, ie, CL No. 015329423 and CL No. 015328711. The owner of the land is the second defendant. The developer was the first defendant. The defendants jointly developed a project on the land. The plaintiff signed a sale and purchase agreement to purchase one unit of apartment known as F01-0, Ground Floor, Block F, Taman Wangsa. The purchase price was RM97,000. Very unfortunately for all the purchasers in the Taman Wangsa scheme, the first defendant got into financial difficulties and ceased construction when the project was only about 50% or 70% completed. The bridging financing was MBf Bank which was later known as AmBank Bhd. The first defendant had charged the project land and had also executed a debenture in favour of AmBank Bhd as consideration for the bridging loan to develop the said project. The first defendant placed under receivership on 26 September 2001 at the instance of AmBank Bhd. The receivers revived the abandoned project. They had a series of meetings and dialogues sessions with the purchasers and the relevant government authorities. They even managed to get the consent of some of the purchasers to waive LAD and

commit themselves to make progress payments according to the certificate of the architect. However, the plaintiff did not sign any letter to waive LAD. The project was apparently completed and occupation certificate was issued in 2007. However, the plaintiff was not given vacant possession of the unit in question. The receivers asked the plaintiff to pay the purported balance of the price of RM47,000. The plaintiff took the position that the full purchase price had been paid before the receivers was appointed. The receivers insisted that they were not bound by the dealings between the plaintiff and defendants before their appointment. After about one and the half years of wrangling over this issue, the receivers terminated the sale and purchase agreement. The plaintiff is now asking for the following remedies from the court against both defendants jointly and severally:

(a) A declaration that the said agreement dated 25 June 1998 is valid and subsisting;

(b) Alternative to (1), damages for wrongful termination of the said agreement to be assessed by the court;

(c) That the defendants do specifically perform and complete the said agreement dated 26 May 1998 more particularly that title in the said property be transferred to the plaintiff;

(d) That vacant possession of the said property to be given to the plaintiff;

(e) Alternative to (3) and (4), that damages *in lieu* of or in addition to specific performance to be assessed by the court;

(f) Statutory interest at the rate of 4% per annum on the sums found due to the plaintiff from the date of judgment to the date of full settlement;

(g) Such other relief as the court deem fit; and

(h) Costs to be taxed unless agreed.

**[3]** The plaintiff also prays for the following relief against the first defendant alone:

(a) That the first defendant do pay the plaintiff liquidated damages in the sum of RM89,109.18 from 26 June 2000 until 19 December 2011 pursuant to cl. 7 of the said agreement and continuing, calculated from day to day at the rate of 8% per annum of the purchase price until delivery of vacant possession of the said property;

(b) Statutory interest at the rate of 4% per annum on the sums found due to the plaintiff from the date of judgment to the date of full settlement; and

(c) Such other relief as the court deem fit.

**Issues**

**[4]** Having regard to the pleaded case of the parties, the principal issue is whether the plaintiff had paid the full purchase price. The concomitant issue would be whether the defendants was lawfully entitled to terminate the sale and purchase agreement. The subsidiary issues would be in respect of the remedies available to the plaintiff if principal issue is answered in his favour.

**Witnesses At Trial**

**[5]** The plaintiff testified on his own behalf and called his mother as a witness. It is apparent that his mother is the more crucial witness as she handled the purchase of the property and subsequent dealings with the developer and the receivers. Only one witness testified for the first defendant, ie, Leong May Lee. She works in Ernst & Young in Kuala Lumpur. Miss Leong told the court that the previous receivers and managers were Mr Lim Tian Huat and Mr Adam Primus Varghese. They were appointed on 14 May 2002. The current receiver and manager of the first defendant is Stephen Duar. Miss Leong told the court that she is assisting in administering the receivership of the first defendant in her capacity as engagement partner. The second defendant had been wound up long before the trial in 2006. The affairs of the second defendant are now managed by the official receiver. A memorandum of appearance had been filed on behalf of the second defendant. However, the statement of defence was not filed. At the trial, the representative of the official receiver was present but did not attempt to defend the suit. In the premises, it must be taken that the second defendant would be bound by the decision in this suit.

**Whether The Purchase Price Was Paid By The Plaintiff?**

**[6]** This issue is at the heart of the dispute. The evidence of Rose Chong (PW1) who is the mother of the plaintiff is as follows. She conducted all dealings with the defendants on the plaintiff's behalf. She said that the plaintiff executed the sale and purchase agreement to buy an apartment unit in the project of the first defendant on 25 June 1998. The purchase price was RM97,000. She said that the first defendant who was managed by the receiver and manager had refused to hand over vacant possession on the ground that the "balance purchase price" was not paid. She strongly disputed that the purchase price was not settled. She said that the purchase price for the apartment unit was paid by way of contra arrangement to the first defendant well before the first defendant went into receivership. This contra payment took place in 1998. The plaintiff was the owner of a native title land at that time (NT043072920). His sister owned 90/103 share in another parcel of native title land (NT043072911). The first defendant was interested in the said parcels of land but could not purchase them because of the native land status. Thus the plaintiff sold the land to one Mansur bin Salim who is a native for RM400,000 *via* a sale and purchase agreement dated 20 April

A 1998. It was a term of the agreement that the first defendant would sell five units of apartments (including the apartment unit in question) for the sum of RM566,000. It was also a term of the agreement that the Mansur would release RM300,000 out of the total purchase price of RM400,000 to the first defendant as part payment of the purchase price of the five units. Rose Chong
B said that she did not receive the balance of the RM100,000 because Wong Kaw, one of the directors of the first defendant told her that he will use the said money to settle the balance of the purchase price of the five units. Rose Chong said that she knew that the redemption sum (RM35,000) owed to the bridging financier, AmBank Bhd (then known as MBf Bank) was paid because
C they issued two letters on 12 June 2000 stating that there was no outstanding sum due on the property in question. She also said that the first defendant had executed a memorandum of transfer in escrow in favour of the plaintiff. However, she did not produce it as the lawyer who handled the matter was already adjudged a bankrupt and is no longer in practice. Rose Chong also applied for a small loan of RM35,000 from the Bank of Commerce to pay
D for the unit in question because she was given legal advice by Messrs Alex Pang & Co that her position would be more secure as the fist defendant would have issue the deed of assignment to the bank. Very crucially, Rose Chong said that the difference between the selling price of the apartment unit in question, *ie*, RM97,000 and the loan amount of RM35,000 was fully settled
E by way of the said contra arrangement referred to earlier. As evidence she pointed to a letter found at p. 66 of the bundle of documents (B). It is a letter dated 18 March 1999 from the first defendant confirming that the difference between the loan amount and the selling price has been paid. The letter was signed by a director of the first defendant, ie, Kuai Yuk Fung. On 6 February
F 2009, AmBank again confirmed in writing that no outstanding sum was owed to them in respect of redemption of the property. Notwithstanding the above, she said that when the receiver and manager attempted to revive the project, the plaintiff was asked to sign a confirmation and concurrence for rehabilitation of the project. However, the plaintiff did not sign any
G document to waive his right to LAD. The plaintiff also refused to pay progress payments as the apartment unit was a completed showroom unit and the first defendant had confirmed that the difference between the selling price and the loan amount of RM35,000 had been received. The occupation certificate was issued on 3 September 2007, ie, after six years from the date
H of agreed completion. Under the terms of the agreement, the first defendant should give vacant possession within 14 days. However, the receiver and manager refused to hand over the property.

**[7]** Miss Leong, the officer assisting the current receiver and manager, was the only witness for the first defendant. The position of the receiver and
I manager is as follows. They did not produce any evidence to dispute the claim of Rose Chong that the apartment unit in question was a completed showroom unit when the sale and purchase agreement was signed. They did

not call any evidence to rebut the testimony of Rose Chong in respect of the contra arrangement. Miss Leong candidly admitted that she does not have personal knowledge surrounding the facts of this case. Her knowledge is limited to the documents before her. She did not even categorically say that the receiver and manager had adopted the sale and purchase agreement in question. She said that the receiver and manager is not bound by any agreement that they have not adopted. She said that the receiver and manager would only have adopted the sale and purchase agreement in question if the purchasers had agreed to abide by certain conditions. However, she disagreed that the termination of the sale and purchase agreement for non-payment of the balance of the purchase price means that the receiver and manager had adopted the said agreement. She then refused to answer the question put to her that once a contract is adopted, it is not open for the receiver and manager to take the position at a later date that it is not binding. She did not dispute the letter at p. 66 of bundle of documents (B) where the director of the first defendant agreed that the difference between the purchase price and the loan sum had been paid. She said as follows:

Q: But the receiver has knowledge of this letter?

A: Based on this letter yes.

Put: The difference between the purchase price and the loan amount paid by the purchaser is RM62,000 based on this letter. Agree?

A: The letter does suggest that. Yes.

**[8]** However, she said that the admission by the director of the first defendant does not bind the receiver and manager as it is a matter that occurred prior to their appointment. She said as follows:

Put: That the receiver did not at any time dispute this letter.

A: This letter actually contains matters that transpired prior to the appointment of the receiver and matters occurring prior to our appointment as receiver did not necessary have to be adopted by the receiver.

**[9]** In respect of the contra arrangement wherein the balance of the purchase price was allegedly paid to the first defendant, Miss Leong was unable to cast much light as she did not interview the managing director of the first defendant. She was "not on the job" at that time. However, she agreed that the receiver and manager had agreed to recognise 50% of the contra payments. Finally, she frankly admitted that the only reason that the receiver and manager demanded RM48,500 as the balance of the purchase price is because they did not recognise the contra payments made to the first defendant prior to their appointment. She said as follows during cross-examination:

Put: The only reason is you are now saying sums are due to under the said Sale and Purchase Agreement is because the Receiver did not fully recognise the contra. Agree?

A: I agree.

Put: The Receiver is not entitled to do that.

A: I disagree.

**[10]** In the final submissions, counsel for the first defendant also submitted the contra arrangement is illegal as attempts to contravene s. 17 of the Sabah Land Ordinance (Cap 68) that prevents dealings between natives and non-natives.

**Decision**

**[11]** I shall first decide on the issue whether any balance of the purchase price is due to the first defendant from the plaintiff. Rose Chong told the court that the difference of RM62,000 between the loan amount from Bank of Commerce and the selling price was settled by way of contra arrangement. The selling price of the apartment unit is RM97,000. On balance of probabilities, I find that Rose Chong was speaking the truth and that the balance of the purchase price was settled in the said manner. My reasons are as follows. The plaintiff exhibited documentary evidence, ie, the related sale and purchase agreement and memorandum of understanding to support their case that there was indeed a contra arrangement wherein the first defendant had bought their native lands through one Mansur. This evidence was not rebutted by the receiver and manager who acted for the first defendant. None of the directors of the first and second defendants took the witness stand to deny this arrangement. It is also significant that the first defendant had confirmed in their letter dated 18 March 1999 that the difference between the loan amount and the selling price has been paid. This letter was signed by no less a person than a director of the first defendant. The receiver and manager on behalf of the first defendant did not challenge the authenticity of this letter as it was admitted into evidence. They only took the position that they are not bound by it as the contra arrangement occurred before their appointment. I shall address this point at a later stage. The said letter is unequivocal in its meaning. It is a letter from the first defendant who is the developer that states that the purchaser had paid the difference between the selling price and the loan amount. This means that there is nothing else due from the plaintiff as purchaser to the first defendant as the developer. Counsel for the first defendant submitted that it is only a "standard" letter because the plaintiff was applying for a loan. However, the receiver and manager who acted for the first defendant did not tender any evidence to support this contention. Furthermore, the former director of the first defendant and the signatory of the said letter, Mr Kuai Yuk Fung did not take the witness stand to rebut the assertion of Rose Chong that the purchase price was fully paid as evidenced by the said letter. It is also difficult to imagine that a developer of a big project would be so foolhardy to admit to receiving a moderately large sum of money so that the purchaser could apply for a loan. The other reason for me to hold that the purchase price has been paid by the plaintiff by way of contra arrangement with the first defendant is that the bridging

financier certified twice that the redemption sum in respect of the apartment unit in question has been fully paid. Miss Leong stated that normally the redemption sum would be paid by the developer from the progress payments received from the purchaser. She said as follows during cross-examination:

> Q: Would you agree with me that if a purchaser took out a housing loan to finance a purchase price of a property, part of the loan amount would have to be utilised firstly to redeem that property from the bridging financier?
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> A: In a typical housing project the purchaser would receive progress billings from the developer in which the purchaser would have to remit payment to the developer and the developer will in turn utilise the monies to redeem the property. If the purchaser actually takes out the loan by way of end financing, then the portion of that financing may be used to settle the 3 redemption sum. It depends on how much financing he is taking.
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> Q: In this case even without the progressive billings, the redemption sum has been fully settled. Agree?
>
> A: The letter from the Chargee bank suggest that the redemption sum has been settled.

**[12]** It is common ground that the plaintiff or his mother, Rose Chong did not comply with progress payments request. This is because they took the position that the whole purchase price was settled by loan and by way of contra arrangement. Therefore, the first defendant could have not settled redemption sum from the progress payments. Ambank confirmed as earlier as on 12 June 2000 that the redemption sum had been paid. The receiver and manager were not appointed as yet at that time. Therefore, it is highly probable that the directors of the first defendant had received the contra payment as evidenced by the letter dated 18 March 1999. Thus the evidence of Rose Chong that the purchase price had been paid in full is highly probable. Counsel for the first defendant argued that the fact that no redemption sum is owed to the chargee bank, ie, AmBank, does not relieve the plaintiff from his obligation to pay the balance of the purchase price. On the face of it, there is nothing incorrect about this submission of counsel for the first defendant. However, it is not the case of the plaintiff or Rose Chong that merely because the redemption sum had been paid, they are not obliged to pay the balance price. Their case is that the purchase price had been fully paid for the reasons that I had earlier adverted to.

**[13]** The second main argument of counsel for the first defendant is that the contra arrangement is illegal because the first defendant is a non-native company and they acquired the native lands of the plaintiff and his sister through one Mansur who is a native. They have thereby circumvented s. 17 of the Sabah Land Ordinance (Cap 68) that prevents dealings between natives and non-natives in respect of sale of native land. In my respectful opinion, this argument is a "red herring" in that it has nothing to do with the relevant

issues in this case. The plaintiff is not attempting to seek relief under the sale and purchase agreement that he signed with Mansur for the sale of his native land. The sale of the native land has been mentioned in this case only to support the case of the plaintiff that the purchase price for the apartment unit in question has been fully settled and that the payment by contra has been acknowledged by the plaintiff. Therefore, there can be no gainsaying that the relevant issue is whether the first defendant had received the full purchase price from the plaintiff. The legality of the sale of the native land is completely irrelevant to this case. As the letter of the first defendant dated 18 March 1999, says that the difference between the selling price and the loan amount had been paid, it must be taken that the plaintiff had proved his assertion that the purchase price was fully paid.

**[14]** The third argument which was addressed by counsel for the first defendant and Miss Leong who testified in her capacity as engagement partner of the receiver and manager is this. The receiver and manager is not obliged to recognise the contra payment as it occurred before they were appointed. Counsel for the first defendant also submitted that a receiver and manager need not recognise pre-receivership contracts. In my view, there are two issues here. I will first address the issue whether the receiver and manager is bound by the sale and purchase agreement signed between the plaintiff and the first defendant. Counsel for the first defendant has not produced any clear authority for the general proposition that a receiver and manager is at liberty to ignore pre-receivership contracts that the subject company had entered into with third parties. He only cited authority that states that a privately-appointed receiver and manager is under no obligation to carry on the business of the company at the debenture holder's expense (see *R v. Board of Trade ex p St Martin Preserving Co Ltd* (1964) 2 All ER 561). He also cited an authority that states that the primary duty of a receiver and manager is to realise the assets in the interests of the debenture holder (*Gomba Holdings Ltd v. Homan* (1986) 1 WLR 1301).

**[15]** Be that as it may, in the instant case, it is crystal clear that the successive receiver and manager had by their conduct adopted the sale and purchase agreements that were signed between the first defendant and the various purchasers that include the plaintiff. They had revived the abandoned "Taman Wangsa Phase 1 and II" project. They had asked the purchasers to sign a confirmation and concurrence for rehabilitation letter to give them consent to proceed with the project. Finally, the receiver and manager had purported to terminate the sale and purchase agreement for failure to pay the full purchase price. If the receiver and manager could arrogate themselves the power to terminate the sale and purchase agreement in question, it also means that they had adopted it in the first place. The second issue is whether the receiver and manager can simply ignore the contra payment on the ground that they had not been appointed as yet at the material time. This is not a question of whether the receiver and manager is bound by a pre-

receivership contract. It is a question of whether they are bound by the conduct of the first defendant in accepting payment, ie, the full purchase price by contra arrangement. I see no lawful reason why the receiver and manager should be at liberty to deny or repudiate payments received and acknowledged by the first defendant. If the receiver and manager could legally do so, in my view no business dealing with a company would be safe as a future receiver and manager could with impunity disclaim the transaction to the detriment of an innocent third party.

**Limitation**

**[16]** The plaintiff has prayed for specific performance as the principal remedy. The first defendant pleaded that the remedy of specific performance is barred by the Sabah Limitation Ordinance. This is because limitation period to pursue the remedy of specific performance is three years. In the instant case, occupation certificate was issued on 3 September 2007. The first defendant who had been taken over by the receiver and manager was obliged to give vacant possession within 14 days. They failed to do so. Therefore, the time to sue for specific performance ran after the said 14-day period. The instant suit was instituted only in 2011, ie, outside the 14-day period. Therefore, I agree with counsel for first the defendant that the court cannot grant specific performance in this case. During the testimony of Miss Leong, counsel for the first defendant also attempted to adduce evidence that specific performance is impossible in this case as the apartment unit has been sold to a third party. I disallowed the evidence on this point as counsel for the plaintiff objected on the ground that it was not pleaded. However, it is a moot point as I have ruled that the remedy of specific performance is barred by limitation law.

**Conclusion**

**[17]** To recapitulate, the plaintiff has proved on a balance of probabilities that the full purchase price had been paid for the apartment unit in question. In the premises, I hold that the termination of the sale and purchase agreement by the receiver and manager who acted for the first defendant is unlawful. I have disallowed the specific performance remedy for reason given earlier. However, the plaintiff is not barred from seeking damages for breach of contract as the limitation period for breach of a written agreement is six years. The plaintiff has also prayed for liquidated ascertain damages in this case. However, in the instant case the apartment was never delivered to the plaintiff. Therefore in my view, an award for damages for breach of contract to be assessed by the Deputy Registrar or Senior Assistant Registrar of the High Court should grant sufficient relief to the plaintiff to claim all the loss that he suffered by being deprived of the property that he contracted to buy in 1998. In the premises, I shall make the following orders:

(a) I grant a declaration that the termination of the sale and purchase agreement by the first defendant is unlawful;

A (b) *In lieu* of specific performance and LAD, I order damages to be assessed in favour of the plaintiff for breach of contract against the defendants jointly and severally. The damages are to be assessed by Deputy Registrar unless otherwise agreed;

B (c) Interests on the damages at 5% to run from the date of the judgment to date of full settlement; and

(d) The first defendant to pay costs of RM30,000 to the plaintiff.

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